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February 26, 2004

VIA ELECTRONIC COMMENT FILING SYSTEM

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Re: ***EX PARTE SUBMISSION***
ET Docket No. 03-158
MB Docket No. 03-159
Amendment of Parts 2, 73, 74 and 90 of the Commission's Rules to
Permit New York Metropolitan Area Public Safety Agencies to Use
Frequencies at 482-488 MHz

Dear Ms. Dortch:

As consultants to the County of Westchester, New York ("Westchester"), we hereby submit these written *ex parte* comments to the above-referenced proceeding. For the reasons explained below, Westchester requests that the final language of NG66 of Section 2.106 of the Commission's rules include Westchester County, New York.

By way of background, Westchester is part of the New York Metropolitan Area. It is a county with a population of nearly one million people located on the northern side of the New York City Borough of the Bronx. It also has a large inbound commuter population who work at several major corporate headquarters, such as IBM and PepsiCo. Westchester contains the key water supply for both Westchester and New York City as well as the two active nuclear power plants in the metropolitan area.

Despite these obvious public safety needs, Westchester has been operating for many years with only a limited amount of spectrum. For example, the Westchester Fire/EMS Dispatch operates with two low band dispatch frequencies, and the various fire departments use 4 low band fire ground frequencies and 8 low-power UHF fire ground frequencies, which are overcrowded and inadequate for a multiple incident response. The various Westchester Volunteer Ambulance Corps operate with 4 VHF channels, which are shared with non-

emergency users and are inadequate for multiple incidents. Westchester has 38 independent police departments, 59 independent fire departments, 43 independent EMS corps and 13 hospitals. Radio interoperability among these agencies is non-existent. Many of these departments have instituted their own low profile systems in various public safety bands to deal with the inadequacy of the countywide systems.

Westchester has attempted to address this problem by obtaining an authorization for Station WPVA646 for 12 UHF trunked frequency pairs at four locations. Unfortunately, when Westchester's equipment vendor conducted field tests, it discovered that the frequencies are unusable due to the geographic proximity of co-channel and adjacent channel stations, especially from other users in New York City. A frequency search reveals that the only potentially available frequencies are either in the 700 MHz range or the 482-488 MHz range. However, since 700 MHz will not be available until 2007 at the earliest, and most likely will not be available for many more years, that leaves 482-488 MHz as the only potentially available spectrum.

The March 1995 Waiver Order¹ granting a waiver for use of TV channel 16 for public safety land-mobile operations authorized base station operations in the five boroughs of New York City, Nassau, Suffolk and Westchester Counties, New York and Bergen County, New Jersey. It also authorized mobile operations in those boroughs and counties plus any other areas within a 30-mile radius of the Empire State Building. The Notice of Proposed Rulemaking ("NPRM"), FCC 03-165, released July 10, 2003, generally discusses the allocation of TV channel 16 for land mobile use in the New York Metropolitan Area. Attached to the NPRM is a report prepared by the Vogel Consulting Group, Inc. on behalf of the New York City Police Department entitled Frequency Analysis in Support of the Permanent Reallocation of TV Channel 16 to the New York Metropolitan Area for Public Safety Wireless Applications (the "Vogel Report"). Appendix A4 to the Vogel Report bases its analysis on the same areas permitted in the March 1995 Waiver Order, including Westchester.

Notwithstanding the foregoing, Appendix A to the NPRM proposes an amendment to Section 2.106 of the Commission's rules (Table of Frequency Allocations) in the form of an amendment to footnote NG66. Unfortunately, the proposed language does not include Westchester County. Because Westchester was part of the original Waiver Order, the NPRM discusses the New York Metropolitan Area, Westchester is part of the New York Metropolitan Area, and Westchester also has a pressing need for spectrum for public safety use, Westchester requests that the final language of NG66 include Westchester County, New York.

¹ *Waiver of Parts 2 and 90 of the Commission's Rules to Permit New York Metropolitan Area Public Safety Agencies to Use Frequencies at 482-488 MHz on a Conditional Basis*, 10 FCC Rcd. 4466, 4469 at Appendix (1995).

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Very truly yours,

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